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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1959.

No. 306

THE PEOPLE OF THE STATE OF ILLINOIS, ex rel.
EUGENE C. JAMES,
Petitioner,

vs.

STANLEY A. LYNCH, Sheriff of DuPage County, Illinois,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Petition for Writ of Certiorari

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Petition for Writ of Certiorari

Opinion of the Court Below.

The opinion of the Supreme Court of Illinois is reported at 16 Ill. 2d 280, 158 N.E. 2d 60. (Appendix 1.)

Statement of Jurisdiction.

The judgment of the Supreme Court of Illinois was entered on March 20, 1959, a timely petition for rehearing was denied on May 19, 1959.

The statutory provision believed to confer upon this Court jurisdiction to review the judgment in question by writ of certiorari is Title 28 United States Code, Section 1257(3).

Question Presented.

Whether the petitioner was denied due process of law in the *habeas corpus* hearing determining the validity of his extradition from the State of Illinois to the State of New Jersey, where the petitioner testified in his own behalf and denied being present in the demanding state at the times specified in the warrant issued by the governor of Illinois, and the trial court considered as evidence, in rebuttal to the testimony of the petitioner, an *ex parte* affidavit attached to the demand from the governor of New Jersey to the governor of Illinois.

Constitutional and Statutory Provisions Involved.

CONSTITUTION OF THE UNITED STATES:

Article IV, Section 2, Clause 2:

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or

property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE:
Title 18, Section 3182

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, or the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

Statement of the Case.

Eugene C. James, the petitioner herein, instituted the proceedings in the Circuit Court of Du Page County, Illinois, by filing a petition for writ of *habeas corpus* to contest his extradition from the State of Illinois to the State of New Jersey. The petition alleged: 1) That the requisition papers are not in regular and legal form. 2) That he was not the person named in the requisition, indictment or affidavit, or in the warrant issued by the governor of the State of Illinois. 3) That he was not substantially charged with the crime against the laws of the demanding state. 4) That he was not a fugitive from the justice of the demanding state, that he was not actually present in the demanding state on or about the date which the offense with which he is charged is alleged to have been committed.

The respondent, Stanley A. Lynch, sheriff of Du Page County, Illinois, filed a return to the petition alleging the warrant of the governor of the State of Illinois and the petition was allowed to stand as a traverse to the return. The governor's warrant purported, on its face, to have been issued "in compliance with the Constitution and the Laws of the United States."

At the hearing in the trial court the respondent introduced in evidence, over the objection of the petitioner, the warrant issued by the governor of Illinois and a copy of the requisition papers submitted by the governor of New Jersey. The petitioner testified in his own behalf and stated that he was not the person named in the indictments in New Jersey which were set out in the warrant for extradition. The petitioner also testified that he was not in the State of New Jersey on March 31, 1950, or on September 24, 1952, the two dates named in the warrant for extradition issued by the governor of Illinois and the dates set forth in the demand by the governor of New Jersey.

On cross-examination the petitioner was questioned as to whether he had been in New Jersey at other times: November, 1952, December, 1952, and the whole period between March 31, 1950 and May 6, 1954. To these questions the petitioner replied that he was not, to the best of his knowledge, in the State of New Jersey at any of those times. The petitioner was further cross-examined concerning whether or not he was present at a wedding reception held in Newark, New Jersey in the latter part of December, 1952, or the early part of January, 1953. This wedding was alleged to have been that of Judith Saperstein and Stanley Amsterdam. The petitioner stated that he did not know a Judith Saperstein or Stanley Amsterdam, and to the best of his knowledge he had not attended that wedding reception. He further testified upon cross examination that he knew a person by the name of Winfield Chasmar and had known him for twenty years but to the best of his knowledge, had never seen Chasmar in the State of New Jersey. The petitioner was also cross examined concerning a group picture and testified that he knew the persons pictured therein; but that he did not know whether it had been taken at a wedding reception held in Newark, New Jersey on the 27th day of December, 1952.

At the close of the testimony of the petitioner, counsel for the sheriff, referred the trial court to a copy of an affidavit contained in the requisition papers submitted by the governor of New Jersey to the governor of Illinois. This affidavit had been made by one Winfield Chasmar who deposed that he had known a Eugene C. James, whose picture had been attached to the affidavit, that he had attended a wedding reception in Newark, New Jersey, in the latter part of December, 1952 or the early part of January, 1953, that this wedding had been that of the daughter of Louis B. Saperstein, Judie, and Stanley Amsterdam, that Eugene C. James was present at that reception. Counsel for the sheriff also introduced in evidence an exemplified copy of

a certificate of marriage of Stanley B. Amsterdam and Judith S. Saperstein, which took place in Newark, New Jersey, on December 27, 1952.

At the close of the above evidence, the trial court quashed the writ of *habeas corpus* and ordered the petitioner remanded to the custody of the sheriff to be turned over to the authorities of the demanding state.

From this ruling, the petitioner appealed according to law to the Supreme Court of Illinois, which appeal was made a supersedeas. The points raised in the Supreme Court of Illinois for reversal of the order of the trial court were as follows:

1. The trial court erred in considering a copy of an affidavit, which was part of the purported copy of the papers before the Governor of the State of Illinois and upon which the said Governor based his order to have the warrant issue, as evidence in the *habeas corpus* hearing on the questions of whether the [petitioner] was the person named in the indictments and whether he was a fugitive from the demanding state.

2. The use of the copy affidavit in this case as evidence of the [petitioner's] presence in the demanding state and that he was the person named in the indictments constituted a denial of due process of law [contrary to the XIVth Amendment to the Constitution of the United States].

3. The evidence did not support the order of the trial court that the relator be remanded to the custody of the respondent for extradition to the State of New Jersey.

Under Illinois practice no formal motion for new trial raising errors is necessary in cases wherein the judge sits as trier of fact without a jury. On appeal, in Illinois, no

assignments of error are necessary, the points raised in the brief being sufficient to raise the question. Ill. Rev. Stat. (1957) Ch. 110, §§68.3, 101.36, 101.39.

The Supreme Court of Illinois overruled each of the points raised and affirmed the judgment of the trial court.

Reasons for Granting Writ.

We are here asking the Court to review a question of great importance, concerning the procedures to be followed in a *habeas corpus* hearing on a matter involving interstate rendition. There are two bases for the jurisdiction of this Court to hear the matter. One is that interstate rendition or extradition is a subject which is controlled by the Constitution of the United States Article IV, clause 2 and the statutes of Congress enacted pursuant thereto; and the second basis for jurisdiction is the due process clause of the XIVth Amendment to the Constitution of the United States.

As we have set forth in the statement of the case, when the petitioner in this case had finished his testimony in which he denied that he was present in the demanding state at the times set forth in the extradition warrant of the governor of Illinois, the respondent referred the trial court to a copy of an affidavit which was contained in the requisition papers, forwarded by the governor of New Jersey to the governor of Illinois, and which were admitted in evidence by the respondent in the case below over the objection of the petitioner. This affidavit which is set out in full on pages 39 and 40 of the Abstract of Record printed for use in the court below (nine copies of which have been filed with the record in this case) states in substance that the affiant, Winfield Chasmar, had been a vice-president of the Laundry Workers' International Un-

ion; that Eugene C. James was also an officer of the Laundry Workers Union; that a photograph of Eugene C. James was attached to the affidavit; that he knew Eugene C. James; that he attended a wedding reception in Newark, New Jersey in the latter part of 1952 or the early part of 1953; that the wedding was that of Judie Saperstein and Stanley Amsterdam; and that Eugene C. James was also present at that wedding reception.

The effect of this affidavit was to rebut the testimony of the petitioner that he was not in the demanding state at the times set forth in the governor's warrant. The question therefore resolves itself to the following: Is it a denial of due process of law for the state of asylum to use as evidence against one contesting his extradition *ex parte* affidavits which accompany the requisition from the demanding state to the executive authority of the state of asylum? Further, is it lawful under the section of the Constitution of the United States providing for interstate extradition and the statutes of Congress enacted pursuant thereto, to so use such an affidavit?

The extradition process, while not determinative of the ultimate guilt or innocence of the purported fugitive, is one which subjects him to arrest and, therefore, to a temporary restraint upon his liberty; to transportation to and prosecution in, as in this case, a distant state at great expense and great inconvenience to him. Extradition is therefore not to be carried out without all regard for due process of law.

It is true that "vigorous enforcement of the constitutional and statutory provisions relating to fugitives from justice is vital to the harmony and welfare of the states." *Appleyard* v. *Massachusetts*, 203 U.S. 222, *McNichols* v. *Pease*, 207 U.S. 100. However, we submit, that the answer

to a denial of due process in a matter of extradition is not that it aids in forming harmonious relationships between states or that it is administratively expedient. The use of the affidavit of Chasmar as evidence against the petitioner was a complete denial of due process of law. Without attepting to cite all the cases of this court which have contained definitions of due process of law we call the Court's attention to the words of Mr. Justice Jackson in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313:

> "* * * Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case."

Hearing requires that the petitioner not only is entitled to present evidence in his behalf, but also to cross-examine the witnsss against him. Similar in nature to this case is the case of *Peters v. Hobby*, 349 U.S. 331, wherein the petitioner in that case had been removed from his position with the federal government because of a question concerning his loyalty. At several hearings the petitioner had presented witnesses but had not been given the opportunity of confronting the witnesses against him. Although the Court reversed without reaching the question of constitutional guarantees of due process, Mr. Justice Douglas, concurring, said:

> "Dr. Peters was condemned by faceless informers, some of whom were not known even to the Board that condemned him. Some of these informers were not even under oath. None of them had to submit to cross-examination. None had to face Dr. Peters. So far as we or the Board know, they may be psychopaths or

venal people, like Titus Oates, who revel in being informers. They may bear old grudges. Under cross-examination their stories might disappear like bubbles. Their whispered confidences might turn out to be yarns conceived by twisted minds or by people who, though sincere, have poor faculties of observation and memory.

"Confrontation and cross-examination under oath are essential, if the American ideal of due process is to remain a vital force in our public life . . ."

The primary factual question with which the trial court was concerned was whether or not the petitioner was a fugitive from the justice of New Jersey. As against his uncontradicted testimony that he was not within the state of New Jersey on either of the dates alleged in the warrant of the governor of the State of Illinois, is the purported affidavit of one Winfield Chasmar. This affidavit furthermore does not show that the petitioner committed any crime. It states only that the affiant knew the petitioner and that the petitioner attended a wedding reception in New Jersey.

The record is clear in showing that the trial judge considered the affidavit of Chasmar in determining the truthfulness of the testimony of the petitioner. (Abst. 58-59) As in the loyalty board cases, the petitioner here, whose testimony is otherwise unimpeached, is accused by a person whom he is not permitted to confront and cross-examine. What bias, motive, interest, or other infirmity the testimony of Chasmar might possess is unknown. And it is unknown because the petitioner was not given the opportunity to cross examine the affiant.

It is true that this Court has held that the issuance of the warrant of extradition by the governor of the state of asylum creates a *prima facie* against the alleged fugitive

which he must rebut by proving clearly and satisfactorily that he is not a fugitive from justice. *South Carolina* v. *Bailey*, 289 U.S. 412, *McNichols* v. *Pease*, 207 U.S. 100, *Munsey* v. *Clough*, 196 U.S. 364. There is no authority, however that the alleged fugitive may not prove his case by his testimony alone. In Illinois, if clear and convincing, the uncorroborated testimony of a party which is unrebutted by the opposing party may be of itself be sufficient to sustain the burden placed upon the party offering such testimony. *Paulsen* v. *Cochfield*, 278 Ill. App. 596, *Hall* v. *Flavin*, 349 Ill. App. 392. Thus the trial court could have determined that the petitioner had sustained his burden of proof by his testimony alone. The trial judge chose, however, to disregard the testimony of the petitioner and the reason for his doing so was based in large part on the affidavit of Chasmar. It follows therefore that in considering the *ex parte* affidavit of Chasmar in evaluating the weight to be given the testimony of the petitioner, the trial court denied the petitioner due process of law.

The problem which we ask the Court to review is not one which arises infrequently. The field of interstate extradition is one which is expanding constantly. This Court has the power to control extradition proceedings to prevent violation of the due process clause. We submit that this Court grant this petition for a writ of certiorari to rectify what has amounted to a violation of a principle of justice so rooted in the traditions and conscience of our people as to be ranked fundamental (*Snyder* v. *Massachusetts*, 291 U.S. 97, *Palko* v. *Connecticut*, 302 U.S. 319, *Bute* v. *Illinois*, 333 U.S. 640), the principle that one is entitled to confront and cross-examine the witnesses against him.

Conclusion.

For the above and foregoing reason we respectfully submit that this Court grant our petition for a writ of certiorari to review the judgment of the Supreme Court of Illinois in this case.

Respectfully submitted,

CHARLES A. BELLOWS,
Attorney for Petitioner.

JASON ERNEST BELLOWS,
SHERMAN C. MAGIDSON,
On the Brief.

APPENDIX 1.

Opinion of the Supreme Court of Illinois.

(No. 35016.—Judgment affirmed.)

THE PEOPLE *ex. rel.* Eugene C. James, Appellant, *v.* STANLEY A. LYNCH, Sheriff, *et al.*, Appellees.

Opinion filed March 20, 1959—Rehearing denied May 19, 1959.

Opinion filed March 20, 1959—
Rehearing denied May 19, 1959.

APPEAL from the Circuit Court of Du Page County; the Hon. MEL F. ABRAHAMSON, Judge, presiding.

MR. JUSTICE KLINGBIEL delivered the opinion of the court:

Eugene C. James, hereinafter referred to as the relator, filed his petition for a writ of *habeas corpus* in the circuit court of DuPage County to test the validity of his extradition to the State of New Jersey. A return to the writ was filed alleging the Governor's warrant, and the petition was allowed to stand as a traverse to the return. A hearing was had upon these pleadings at the conclusion of which the writ was ordered quashed and the relator ordered remanded to the custody of the respondents for delivery to the messenger of the State of New Jersey. The relator seeks a review here of his contentions that he was not in the demanding State on the various dates alleged in the indictment and that he was not the same person named in the various counts of the indictment. Section 10 of the Uniform Criminal Extradition Act authorizes our jurisdiction to consider this appeal. Ill. Rev. Stat. 1957, chap. 60, par. 27.

The indictment charges a conspiracy between Louis B. Saperstein and Eugene C. James, wherein funds of the Laundry Workers International Union were embezzled

while James was the acting secretary-treasurer of said union and also seventh vice-president. There are 24 counts in the indictment, each charging misappropriations of union funds in large amounts, some suggesting, $500,000, $600,000 and $700,000. It was alleged that the acts were committed in the State of New Jersey, beginning on or about March 31, 1950, and continuing to *about* May 6, 1954. The overt acts were alleged in the various counts to have been committed on or about March 31, 1950; August 14, 1950; between February 1, 1951, and March 26, 1954; between October 17, 1952, and January 18, 1954; between September 14, 1951, and August 27, 1953; and between September 26, 1951, and May 6, 1954; September 24, 1952; October 3, 1952, November 7, 1952; December 9, 1952; December 15, 1952; January 27, 1953; March 2, 1953; March 20, 1953; April 10, 1953; April 14, 1953; April 28, 1953; June 10, 1953; July 7, 1953; August 12, 1953; August 31, 1953; September 28, 1953; October 14, 1953; October 15, 1953; November 6, 1953; December 7, 1953; December 30, 1953; January 29, 1954; February 8, 1954, and February 10, 1954.

The relator's direct testimony was brief. He simply stated that he was not in New Jersey on March 31, 1950, or on September 24, 1952 and that he was not the same person as the Eugene C. James named in the indictment.

On cross-examination, relator was questioned about respondent's exhibit 2 which consisted of various papers submitted by the Governor of New Jersey in requesting the warrant from the Governor of Illinois. As a part of this exhibit there was an affidavit of Winfield S. Chasmar to which was attached a photograph of a group of people allegedly attending a wedding reception given for the daughter of Louis B. Saperstein in Newark, New Jersey, in the latter part of December, 1952. Chasmar stated that he

was president of the local union No. 2 of the Laundry Workers International Union from 1938 to 1957; that he had known Eugene C. James as an officer of the union for 15 years. Relator admitted knowing him for 20 years. Also a part of exhibit 2 is a photostatic copy of a certificate of marriage of Stanley B. Amsterdam and Judith F. Saperstein, duly certified by the State Registrar, accompanied by a certificate of his authority by the Secretary of State of New Jersey. According to the certificate the marriage was performed on December 27, 1952.

The relator admitted his presence when the group picture was taken but could not remember the date or the circumstances under which it was taken. He recognized Louis B. Saperstein, his codefendant, also Samuel J. Byers who was also mentioned in the indictment as one of the agents of the involved union. The relator's attitude, when being questioned about his alleged presence in the State of New Jersey during the latter part of December, 1952, is best reflected in the questions and answers on this subject, quoting from the record:

"Q.: I am asking you if you have ever seen the photograph before?

A.: I never saw that picture before.

Q.: Do you appear in that picture?

A.: Sure, that's me right there.

Q.: Do you recall the occasion when the picture was taken, sir?

A.: No, I don't know if I was at the wedding, if that is what you are referring to.

Q.: Do you recall where that picture was taken?

A.: No sir.

Q.: Do you know anyone else in that picture?

A.: I know them all.

Q.: You have no idea when and where this picture was taken?

A.: It could have been taken at 100 different places.

Q.: Well I am asking you whether you know where it was taken.

A.: Definitely not. I don't know exactly where it was taken because the same group of people I have seen at several parties on several different occasions with all over the country. Where that was taken I have no way of knowing any more than you do.

Q.: Could that picture have been taken at a wedding reception held on the 27th day of December, 1952, at the Essex House in Newark, New Jersey, Mr. James?

A.: I don't know whether it was or not.

Q.: You ought to know whether you were there or not.

A.: I already answered that question.

Q.: You were not in New Jersey on the 27th day of December, 1952, is that correct?

A.: Not to the best of my knowledge."

Significantly, the relator denied his presence in New Jersey on only two dates, namely, March 31, 1950, and May 6, 1954. On the many other relevant dates he would say that he was not there "to the best of my knowledge" or "to the best of my recollection." Attached to the affidavit of Chasmar was a photograph of relator who admitted that it was a true likeness of himself.

The burden of the proof is upon the relator to show that he is not the person named in the indictment or that he was not in the demanding State at the time of the alleged offenses. The Governor's warrant and accompanying papers constituting the requisition of the demanding State makes a *prima facie* case, and affidavits accompanying the requisition are rightly considered by the trial court. (*People ex rel. Guidotti* v. *Bell*, 372 Ill. 572; *People ex rel. Buxton* v. *Jeremiah*, 364 Ill. 274; *People ex rel. Stanton* v. *Meyering*, 345 Ill. 598.) When the crime charged involves continuing acts, such as conspiracy to embezzle, the presence of the defendant in the demanding State need not be on the exact date charged. It is sufficient if he was present on any of the dates alleged in the indictment of the demanding State. (*People ex rel. Moore* v. *Wirz*, 349 Ill. 80; *People ex rel. Mortensen* v. *O'Brien*, 371 Ill. 351.) The relator did not deny that he was secretary-treasurer of the union that allegedly lost large sums of money. Furthermore, it appears that relator recognized the photograph of Saperstein and Byers, both of whom were involved with him in this difficulty, and he admitted that the picture produced by Chasmar was one of himself. Surely under these circumstances it is difficult to believe that relator is any other than the Eugene C. James named in the indictment.

Relator's denial that he was in the demanding State on the date of the offense alleged in the indictment is both incomplete and unconvincing. The trial court correctly determined that the writ issued herein should be quashed and relator remanded to the State of New Jersey. This conclusion cannot be disturbed unless it is contrary to the manifest weight of the evidence. Such is not the case here.

Judgment affirmed.

APPENDIX 2:

Judgment Order.

BE IT REMEMBERED, that, to-wit: on the 20th day of March, 1959, the same being one of the day of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

THE PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* EUGENE C. JAMES, *Appellant,*
vs.
STANLEY A. LYNCH, SHERIFF OF DU PAGE COUNTY, *et al.*, *Appellees.*

No. 35016

Appeal from the Circuit Court of DuPage County.

58315

Error to

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the Circuit Court of DuPage County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 25th day of May, 1959.

(SEAL)

S/ Mrs. Earle Benjamin Searcy,
Clerk,

Supreme Court of the State of Illinois